

OPEN MEETING ITEM ORIGIN



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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

MIKE GLEASON
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

2007 AUG 13 P 4: 59

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG 13 2007

DOCKETED BY

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STAFF OF THE UTILITIES DIVISION,
Complainant

vs.

AMERICAN REALTY & MORTGAGE CO., INC.
DBA HACIENDA ACRES WATER SYSTEM,
Respondent

DOCKET NO. W-02258A-07-0470

COMPLAINT AND PETITION
FOR AN ORDER TO SHOW CAUSE

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint, Petition for Order to Show Cause; and Petition for Order for Interim Relief against American Realty & Mortgage Co. d.b.a. Hacienda Acres Water System, an Arizona Corporation, alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Respondent Hacienda Acres Water System (the "Company" or "Hacienda") is a public service corporation as defined by Article XV, § 2 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

3. Pursuant to Decision No. 44444, issued August 1, 1974, Hacienda received a Certificate of Convenience and Necessity ("CC&N") to provide water service in Pinal County. As a condition of its CC&N, Hacienda is required to comply with Arizona law, Commission Orders, and Commission Rules and Regulations.

FACTUAL BACKGROUND

1
2 4. On June 6, 2007, Hacienda filed a Curtailment Plan Tariff with the Commission. In
3 the Curtailment Plan Tariff, Mr. Joseph Lee (a Company representative) made changes to the
4 Curtailment Plan Tariff which stated that each customer should take immediate steps to obtain a
5 personal back-up water supply. Additionally, Mr. Lee terminated services for the back-up well
6 due to nonpayment, which was leased to Hacienda by the Lee Family Trust. Staff recommended a
7 suspension of the tariff due to Mr. Lee's unwillingness to haul water in the event the Company
8 entered into Stage 3 and/or Stage 4 of the Curtailment Plan Tariff.

9 5. Between June 11, 2007 and June 19, 2007, Staff received five calls from customers
10 regarding the letter sent to them by Hacienda about the Curtailment Plan Tariff and the financial
11 status of the Company. The letter notified the customers that Hacienda had filed a Curtailment
12 Plan Tariff with the Commission. It also advised the customers that the Company was in Stage 3
13 and would likely enter Stage 4 as summer temperatures rose, and that at times, it was likely that no
14 water service would be available. According to the letter, the Company was on the verge of
15 bankruptcy. Customers also advised Staff that they were not being billed on a regular monthly
16 basis.

17 6. On June 21, 2007, Staff met onsite with Mr. Lee and three customers. The visit was
18 scheduled to aid Staff in answering questions about the Curtailment Plan Tariff that might be
19 posed during Open Meeting scheduled for June 26, 2007 and June 27, 2007, and to meet with
20 customers regarding their concerns. Arizona Department of Environmental Quality ("ADEQ")
21 staff was also present.

22 7. On July 12, 2007, Staff received from ADEQ the Drinking Water Compliance
23 Status Report, which showed that the nitrates found in drinking water produced by Hacienda
24 exceeded the maximum level allowed. In addition, the report showed that Hacienda has failed to
25 complete the bacteria testing required by law.

26 8. In further reviewing the viability of the water system, Staff detected the following
27 errors in the Company's 2004 and 2005 annual utility reports:
28

- a. There was no mention that the Company was doing business as Hacienda Acres Water Company.
- b. There was no onsite manager listed.
- c. No dollar value was reflected for two (2) wells and two (2) pumps.
- d. The Original Cost Less Depreciation ("OCLD") value was incorrect.
- e. The Depreciation expense was incorrect.
- f. Total fixed assets were incorrect.
- g. Total liabilities and capital was incorrect.
- h. Accumulated depreciation (instead of depreciation expense) was incorrectly deducted in the income statement.
- i. Interest expense from unauthorized loans was incorrectly deducted in the income statement.
- j. Water use data sheets were incomplete and/or incorrect.
- k. No copies of property tax bills or canceled checks were attached, as required.
- l. The income tax page was blank and/or incomplete.
- m. The 2005 annual utilities report indicated that the Company's 2005 property and sales taxes were not current.
- n. The Verification page for Intrastate Revenues included in the 2005 annual utilities report was blank.
- o. The reports were filed late without any request for an extension of time to file.
- p. The system does not have a licensed operator.
- q. The Company has not filed its 2006 annual report.

COMPLAINT**Count I****(Violation of R-14-2-407(C) and (D))**

Staff incorporates the allegations of Paragraphs 1-8.

9. A.A.C. R14-2-407(C) requires utilities to make reasonable efforts to supply a satisfactory and continuous level of service. Additionally, A.A.C. R14-2-407(D)(2) requires each utility to make reasonable provisions to meet emergencies that may result from failure of service. In a previous Open Meeting, Mr. Lee, acting as a representative of Hacienda, refused to provide bottled water to Hacienda customers under the Curtailment Plan Tariff should the Company enter into Stage 3 and/or Stage 4 of the tariff. In addition, Hacienda has failed to bill its customers on a regular monthly basis. The failure to supply its customers with a satisfactory and continuous level of service and to ensure such satisfactory service in the event the Company enters into Stage 3 and/or Stage 4 of the Curtailment Plan Tariff, is a violation by Hacienda of A.A.C. R14-2-407(C).

Count II**(Violation of R-14-2-409(A)(1))**

Staff incorporates the allegations of Paragraphs 1-9.

10. A.C.C. R14-2-409(A)(1) requires each utility to generate a monthly bill for services rendered. Hacienda's failure to bill its customers on a regular monthly basis constitutes a violation of A.A.C. R14-2-409(A)(1).

Count III**(Violation of A.R.S. § 40-221)**

Staff incorporates the allegations of Paragraphs 1-10.

11. Pursuant to A.R.S. § 40-221, the Commission is authorized to prescribe the record-keeping methods and accounts of public service corporations. Hacienda's failure to maintain its 2004 and 2005 annual utility reports as prescribed by the Commission and its failure to submit its 2006 annual utility report constitutes a violation of A.R.S. § 40-221.

...

...

Count IV**(Violation of Obligation to Serve)**

Staff incorporates the allegations of Paragraphs 1-11.

12. Hacienda has an obligation as a public service corporation to provide service to anyone within its service area that makes a lawful request for service. Multiple customers have failed to receive reliable service from Hacienda. Hacienda has therefore violated its obligation to provide service to customers within its certificated area.

Count V**(Violation of Obligation to Keep Taxes Current)**

Staff incorporates the allegations of Paragraphs 1-12.

13. Hacienda has an obligation as a public service corporation to ensure that its property, sales, and income taxes are kept current. In its 2005 annual utility report, Hacienda indicated that its 2005 property and sales taxes were not current. Hacienda provided no information as to whether its 2005 income taxes were current. Furthermore, the Company has failed to provide Staff with any information regarding whether its taxes for 2004 and 2006 are current. Hacienda has therefore violated its obligation to ensure that its taxes are kept current.

Count VI

Staff incorporates the allegations of Paragraphs 1-13.

14. Under Article XV, § 3 of the Arizona Constitution, the Commission may enter "orders for the convenience, comfort, safety, and preservation of the health" of the customers of a public service corporation. In the present case, Hacienda has failed to perform the required bacteria testing required by law and has failed to ensure that the level of nitrates found in its drinking water did not exceed required limits. Therefore, the Commission should order that a manager selected by Staff be immediately appointed as the interim manager (the "Manager") of Hacienda Acres Water System until further order by the Commission, upon reasonable terms and conditions agreed between the Manager and Staff, with full authority to conduct the business and affairs of Hacienda. Moreover, Hacienda should be ordered to cooperate with and indemnify, defend, and hold harmless the Manager for all claims related to its management of Hacienda.

1 15. Without the immediate appointment of an interim manager the health, safety, and
2 welfare of Hacienda customers will be in jeopardy.

3 **RELIEF**

4 16. Wherefore Staff requests that the Commission issue an **ORDER TO SHOW**
5 **CAUSE** directing Hacienda to appear and show cause:

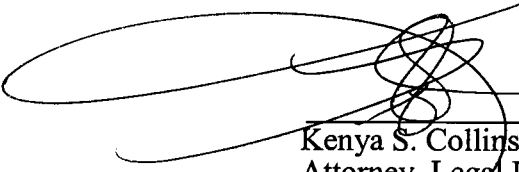
- 6 a. why its actions do not represent a violation of A.A.C. R14-2-407(C) and
7 (D);
- 8 b. why its actions do not represent a violation of A.C.C. R14-2-409(A)(1);
- 9 c. why its actions do not represent a violation of A.R.S. § 40-221;
- 10 d. why its actions do not represent a violation of its obligation as a public
11 service corporation;
- 12 e. why its actions do not represent a violation of its obligation to keep its taxes
13 current;
- 14 f. why a qualified Manager should not be immediately appointed , as selected
15 by Staff;
- 16 g. why Hacienda should not be ordered to cooperate with and indemnify,
17 defend, and hold harmless the Manager;
- 18 h. why the Manager should not be given the authority to explore, negotiate,
19 and implement a long-term water supply solution for Hacienda;
- 20 i. why Hacienda should not be required to find an additional, adequate, safe
21 and permanent source of water to serve its customers;
- 22 j. why other relief deemed appropriate by the Commission should not be
23 ordered.

24 17. Staff further requests that after the conclusion of appropriate proceedings, a final
25 **OPINION AND ORDER** be entered:

- 26 a. finding that Hacienda has violated A.A.C. R14-2-407(C) and (D);
- 27 b. finding that Hacienda has violated A.C.C. R14-2-409(A)(1);
- 28 c. finding that Hacienda has violated A.R.S. § 40-221;

- 1 d. finding that Hacienda has violated its obligation to provide service under its
2 CC&N as a public service corporation;
3 e. finding that Hacienda has violated its obligation to keep its taxes current;
4 f. ordering Hacienda to find and connect new, adequate, and permanent
5 sources of water to its system;
6 g. ordering the immediate appointment of a qualified Manager, selected by
7 Staff;
8 h. ordering Hacienda to cooperate with and indemnify, defend, and hold
9 harmless the Manager;
10 i. imposing fines and penalties pursuant to Article XV, Section 19 of the
11 Arizona Constitution and A.R.S. §§ 40-424 and 40-425 in an amount not
12 less than \$100 nor more than \$5,000 for each day of violation of
13 Commission Statutes, Rules, Regulations or Orders;
14 j. ordering such other relief as the Commission may find just and reasonable.

15 RESPECTFULLY SUBMITTED this 13th day of August, 2007.

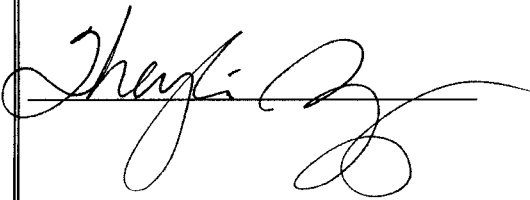
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17 
18 Kenya S. Collins
19 Attorney, Legal Division
20 Arizona Corporation Commission
21 1200 West Washington Street
22 Phoenix, Arizona 85007
23 (602) 542-3402

24 The original and thirteen (13) copies
25 of the foregoing were filed this
26 13th day of August, 2007 with:

27 Docket Control
28 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Copy of the foregoing mailed this
2 14th day of August, 2007 to:

3 Joseph W. Lee
4 American Realty & Mortgage Co., Inc.
5 P.O. Box 232
6 Wittman, Arizona 85361

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 MIKE GLEASON
Chairman

3 WILLIAM A. MUNDELL
Commissioner

4 JEFF HATCH-MILLER
Commissioner

5 KRISTIN K. MAYES
Commissioner

6 GARY PIERCE
Commissioner

8 STAFF OF THE UTILITIES DIVISION,
Complainant

10 vs.

11 AMERICAN REALTY & MORTGAGE CO., INC.
DBA HACIENDA ACRES WATER SYSTEM,
Respondent

DOCKET NO. W-02258A-07-0470

ORDER TO SHOW CAUSE

DECISION NO. _____

13 **OPEN MEETING**

14 **PHOENIX, ARIZONA**

15 **BY THE COMMISSION:**

16 On August 13, 2007, the Staff of the Utilities Division ("Staff") of the Arizona Corporation
17 Commission ("Commission"), file a Complaint and Petition for Order to Show Cause against
18 American Realty & Mortgage Co. dba Hacienda Acres Water System ("Hacienda" or "Company"),
19 an Arizona Public Service Corporation. Staff seeks an Order to Show Cause against Respondent
20 Hacienda.

21 Staff asserts that Hacienda has violated numerous provisions of Arizona law, including
22 Commission Rules, Orders and provisions of the Arizona Revised Statutes. Count I of Staff's
23 Complaint alleges that Hacienda has failed to make reasonable efforts to supply a satisfactory and
24 continuous level of service, and has additionally failed to make reasonable provisions to meet
25 emergencies that may result from failure of service in violation of A.A.C. R14-2-407(C) and (D).
26 Count II of Staff's Complaint alleges that Hacienda has failed bill its customers on a regular monthly
27 basis in violation of A.A.C. R14-2-409(A)(1). Count III of Staff's Complaint alleges that Hacienda
28 has failed to maintain its 2004 and 2005 annual utility reports as prescribed by the Commission and

1 has failed to submit its 2006 annual utility report in violation of A.R.S. § 40-221. Count IV of the
2 Staff's Complaint alleges that Hacienda has violated its obligation to provide service to customers
3 within its certificated area. Count V of Staff's Complaint alleges that Hacienda has violated its
4 obligation to keep its taxes current. Under Count VI of Staff's Complaint, given Hacienda's
5 continued failure to provide for the safety and health of its customers, Staff requests that the
6 Commission consider appointment of an interim manager (the "Manager") selected by Staff for
7 Hacienda until further order of the Commission, upon reasonable terms and conditions agreed
8 between the Manager and Staff, with full authority to conduct the business affairs of hacienda's water
9 system.

10 * * * * *

11 Having considered the entire record herein and being fully advised in the premises, the
12 Commission finds, concludes and orders that:

13 **FINDINGS OF FACT**

14 1. Pursuant to Decision No. 44444, issued August 1, 1974, Hacienda received a
15 Certificate of Convenience and Necessity ("CC&N") to provide water service in Pinal County. As a
16 condition of its CC&N, Hacienda is required to comply with Arizona law, Commission Orders, and
17 Commission Rules and Regulations.

18 2. On June 6, 2007, Hacienda filed a Curtailment Plan Tariff with the Commission. In
19 the Curtailment Plan Tariff, Mr. Joseph Lee (a Company representative) made changes to the
20 Curtailment Plan Tariff which stated that each customer should take immediate steps to obtain a
21 personal back-up water supply. Additionally, Mr. Lee terminated services for the back-up well due
22 to nonpayment, which was leased to Hacienda by the Lee Family Trust. Staff recommended a
23 suspension of the tariff due to Mr. Lee's unwillingness to haul water in the event the Company
24 entered into Stage 3 and/or Stage 4 of the Curtailment Plan Tariff.

25 3. Between June 11, 2007 and June 19, 2007, Staff received five calls from customers
26 regarding the letter sent to them by Hacienda about the Curtailment Plan Tariff and the financial
27 status of the Company. The letter notified the customers that Hacienda had filed a Curtailment Plan
28 Tariff with the Commission. It also advised the customers that the Company was in Stage 3 and

1 would likely enter Stage 4 as summer temperatures rose, and that at times, it was likely that no water
2 service would be available. According to the letter, the Company was on the verge of bankruptcy.
3 Customers also advised Staff that they were not being billed on a regular monthly basis.

4 4. On June 21, 2007, Staff met onsite with Mr. Lee and three customers. The visit was
5 scheduled to aid Staff in answering questions about the Curtailment Plan Tariff that might be posed
6 during Open Meeting scheduled for June 26, 2007 and June 27, 2007, and to meet with customers
7 regarding their concerns. Arizona Department of Environmental Quality ("ADEQ") staff was also
8 present.

9 5. On July 12, 2007, Staff received from ADEQ the Drinking Water Compliance Status
10 Report, which showed that the nitrates found in drinking water produced by Hacienda exceeded the
11 maximum level allowed. In addition, the report showed that Hacienda has failed to complete the
12 bacteria testing required by law.

13 6. In further reviewing the viability of the water system, Staff detected the following
14 errors in the Company's 2004 and 2005 annual utility reports:

- 15 a. There was no mention that the Company was doing business as Hacienda
16 Acres Water Company.
- 17 b. There was no onsite manager listed.
- 18 c. No dollar value was reflected for two (2) wells and two (2) pumps.
- 19 d. The Original Cost Less Depreciation ("OCLD") value was incorrect.
- 20 e. The Depreciation expense was incorrect.
- 21 f. Total fixed assets were incorrect.
- 22 g. Total liabilities and capital was incorrect.
- 23 h. Accumulated depreciation (instead of depreciation expense) was incorrectly
24 deducted in the income statement.
- 25 i. Interest expense from unauthorized loans was incorrectly deducted in the
26 income statement.
- 27 j. Water use data sheets were incomplete and/or incorrect.
- 28 k. No copies of property tax bills or canceled checks were attached, as required.

- 1 l. The income tax page was blank and/or incomplete.
- 2 m. The 2005 annual utilities report indicated that the Company's 2005 property
- 3 and sales taxes were not current.
- 4 n. The Verification page for Intrastate Revenues included in the 2005 annual
- 5 utilities report was blank.
- 6 o. The reports were filed late without any request for an extension of time to file.
- 7 p. The system does not have a licensed operator.
- 8 q. The Company has not filed its 2006 annual report.

9 7. Staff requests that the Commission issue an Order to Show Cause directing Hacienda
10 to appear and show cause:

- 11 a. why its actions do not represent a violation of A.A.C. R14-2-407(C) and (D);
- 12 b. why its actions do not represent a violation of A.C.C. R14-2-409(A)(1);
- 13 c. why its actions do not represent a violation of A.R.S. § 40-221;
- 14 d. why its actions do not represent a violation of its obligation as a public service
- 15 corporation;
- 16 e. why its actions do not represent a violation of its obligation to keep its taxes
- 17 current;
- 18 f. why a qualified Manager should not be immediately appointed , as selected by
- 19 Staff;
- 20 g. why Hacienda should not be ordered to cooperate with and indemnify, defend,
- 21 and hold harmless the Manager;
- 22 h. why the Manager should not be given the authority to explore, negotiate, and
- 23 implement a long-term water supply solution for Hacienda;
- 24 i. why Hacienda should not be required to find an additional, adequate, safe and
- 25 permanent source of water to serve its customers;
- 26 j. why other relief deemed appropriate by the Commission should not be ordered.
- 27

28 8. Staff's requests described in Findings of Fact 7 are reasonable.

9. Based on discussion occurring at the Commission's Open Meeting on _____, the circumstances at Hacienda are dire and justify the immediate removal of current management and appointment of an interim operator by the Commission on an interim basis, pending further order of the Commission in the docket.

CONCLUSIONS OF LAW

10. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

11. Respondent Hacienda is a public service corporation as defined by Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

12. The Commission has jurisdiction over the subject matter of Staff's Complaint and Petition for Order to Show Cause.

13. Notice of this proceeding has been given in accordance with law.

14. A.R.S. § 40-321(A) provides: “[w]hen the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.”

15. Under Article XV, § 3 of the Arizona Constitution, the Commission may enter “orders for the convenience, comfort, and safety, and preservation of the health” of the customers of a public service corporation.

16. Pursuant to A.R.S. §§ 40-202, 40-203, 40-322, and Article XV, Section 3 of the Arizona Constitution, the Commission may prohibit unjust and unreasonable service.

17. Pursuant to A.R.S. §§ 40-331 and 40-332, the Commission may require additions and improvements to the facilities of a public service corporation.

• • •

18. Pursuant to A.R.S. §§ 40-424 and 40-425, the Commission may impose fines in an amount not less than \$100 or more than \$5,000 for each day of violation of Commission Statutes, Regulations, or Orders.

19. It is lawful and in the public interest to issue the requested Order to Show Cause against the Respondents as alleged in Staff's August 13, 2007 Petition described in Finding of Fact 7.

ORDER

IT IS THEREFORE ORDERED that Hacienda shall appear and show cause at a time and place designated by the Hearing Division:

Staff requests that the Commission issue an **ORDER TO SHOW CAUSE** directing Hacienda to appear and show cause:

- a. why its actions do not represent a violation of A.A.C. R14-2-407(C) and (D);
- b. why its actions do not represent a violation of A.C.C. R14-2-409(A)(1);
- c. why its actions do not represent a violation of A.R.S. § 40-221;
- d. why its actions do not represent a violation of its obligation as a public service corporation;
- e. why its actions do not represent a violation of its obligation to keep its taxes current;
- f. why a qualified Manager should not be immediately appointed , as selected by Staff;
- g. why Hacienda should not be ordered to cooperate with and indemnify, defend, and hold harmless the Manager;
- h. why the Manager should not be given the authority to explore, negotiate, and implement a long-term water supply solution for Hacienda;
- i. why Hacienda should not be required to find an additional, adequate, safe and permanent source of water to serve its customers;
- j. why other relief deemed appropriate by the Commission should not be ordered.

• • •

1 IT IS THEREFORE ORDERED that Staff shall immediately commence efforts to obtain an
2 agreement with an interim operator who shall assume operation of Hacienda as soon as possible on
3 an interim basis pending further order of the Commission in this docket.

4 IT IS THEREFORE ORDERED that Hacienda shall cooperate fully with the interim operator
5 and supply all necessary documents, records, and other information requested by the interim operator.

6 IT IS THEREFORE ORDERED that if Hacienda intends to appear and show cause as ordered
7 above it shall file within 10 days of the effective date of this Order, a preliminary statement
8 describing how it will make the showing of cause. Said filing shall include and Answer to Staff's
9 Complaint if the Respondent has not yet filed an Answer.

10 IT IS THEREFORE ORDERED that the Hearing Division shall schedule further appropriate
11 proceedings.

12 IT IS THEREFORE ORDERED that this Decision shall become effective immediately.
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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive
Director of the Arizona Corporation Commission, have
hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

EGJ:KDB:lh\DMR:sab

1 SERVICE LIST FOR: American Realty & Mortgage Co., Inc.
2 dba Hacienda Acres Water System
3 Docket Nos. W-02497A-06-0580

4 Joseph W. Lee
5 American Realty & Mortgage Co., Inc.
6 P.O. Box 232
7 Wittman, Arizona 85361
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